

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 281 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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DRAVINKUMAR P VORA

Versus

STATE OF GUJARAT  
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Appearance:

MRS KETTY A MEHTA for Petitioner  
MR KC SHAH,AGP for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 22/09/2000

ORAL JUDGEMENT

1. This appeal is directed against the judgment and order passed in Civil Suit No. 3931 of 1977 dated 15th January 1981 by the learned City Civil Judge, Ahmedabad, dismissing the suit filed by the appellant - plaintiff.

The suit was for the relief that the Court should order condonation of 25 days break in service and declare that the appellant is in service as a Junior Clerk from the date of his first appointment on March 16, 1962 and consequently, he should be granted all his legitimate pay scales etc. It is the case of the appellant that he was first appointed as a Junior Clerk in the Office of the Industries Commissioner with effect from 16th March 1962. As he could not pass the post-training examination after joining the services, his services were terminated with effect from November 2, 1963. However, after 25 days, he was again recruited in the same office on November 27, 1963. Thus, there was a break of about 25 days in his service. The appellant made a written representation on August 20, 1973 praying for condonation of break in his service. The said representation was rejected on August 21, 1976 by the Government. The appellant, therefore, filed a suit for the relief as stated above. In the plaint, he relied upon the Government Circular, notification and certain orders having been passed by the Director of Technical Education in the year 1971 whereby he condoned the break in service of other clerks in his department. I shall refer to these documents at an appropriate stage.

2. The respondent no.1- State of Gujarat, by written statement Ex. 30, explained the Circulars on which reliance is placed by the appellant. It was contended that under the Government Notification dated June 8, 1966 on which the appellant has placed reliance, the heads of departments have been given powers to condone interruption upto certain limit, but then such condonation has to be for the purpose of Rule 250 of Bombay Civil Services Rules only and the appellant had never approached respondent no.2 for condonation of break in service for the purpose of Rule 250 of the Bombay Civil Services Rules. It was further contended that the suit is bad for non joinder of parties inasmuch as if the relief as prayed for by the appellant is granted and consequently if the appellant's seniority is to be reckoned on the basis that he is in continuous service from March 16, 1962, that would adversely affect quite a large number of Junior Clerks. In absence of junior clerks not having been joined in the suit, as per the respondents, the suit is bad for non joinder of parties.

3. The learned trial judge framed issues at Ex. 14 on the basis of the pleadings. The learned trial judge, after considering the oral as well as documentary evidence on record and after hearing the arguments advanced on behalf of the parties, recorded a finding

that the suit suffers from the vice of non joinder of parties and, therefore, the appellant is not entitled to the relief even if he were to succeed on merits of the case. The learned judge also recorded a finding that the appellant has failed to prove that he is entitled to have condoned the break in his service and he be treated continuous in service with effect from March 16, 1962. The learned judge also observed that even if the order rejecting the appellant's request for condonation of break in service is justiciable, the said order cannot be said to be illegal and unreasonable. In view of this finding, the learned judge finally held that the appellant is not entitled to any relief.

4. Mrs. Mehta, learned Counsel appearing for the appellant, after having taken me through the Government Circular/ Notification Ex. 30 and 31, submitted that the learned trial judge completely misread the same. In the submission of learned Counsel, by virtue of Circular Ex. 30, it is clear that the Government had decided to give continuation in service only to those clerks who were originally selected by the Public Service Commission, but who failed to pass the post-training examination. It is the submission of the learned Counsel for the appellant that on true and correct interpretation of circular Ex. 30, it is clear that such candidates were allowed to retain their seniority which they had at the time of selection by the Public Service Commission for regular appointment. On the notification Ex. 31, it was contended that it was the right of the appellant to apply for condonation of break in service.

5. The relevant portion of the circular Ex. 30 dated July 1, 1964 reads as under:

"... A question has arisen as to whether temporary clerks who are appointed in the Secretariate Department and are later on selected by the Gujarat Public Service Commission, but who fail to pass the post-training examination, should be continued in service, or should be discharged from service on such failure. Government is pleased to direct that in such cases, instead of discharging the clerks from service, they should be allowed to continue in their former position as temporary clerks in the Department without loss of seniority which they had at the time of selection by the Public Service Commission for regular appointment. Such candidates should of course, eventually be discharged when regular Public Service Commission

candidates become available. Thus, they may be continued temporarily in preference to their former juniors who may not have been selected by the Public Service Commission, at all. "

The Notification, Ex.31 which is also relied upon by the appellant reads as under:

"... In exercise of the power conferred by the proviso to Article 309 of the Constitution of India, the Governor of Gujarat, hereby makes the following Rules, further to amend the Bombay Civil Services Rules 1959, namely:-

(1) These Rules may be called, the Bombay Civil Services (Gujarat 16th Amendment) Rules, 1966.

(2) In the Bombay Civil Services Rules, 1959 (hereinafter referred to as the said Rules), in Rule 250, after Note (2), the following Note shall be inserted, namely:-

NOTE (3):

Heads of the Departments may condone not more than three interruptions of total period of not exceeding three months in all such cases in respect of non-gazetted Government servants under their control."

As far as circular Ex. 30 is concerned, it is the say of the respondent Government that the import of the circular dated July 1, 1964 is that in the Secretariate, some candidates were selected as junior clerks to fill up the immediate vacancies. Their appointments were purely ad-hoc. They were liable to be substituted by Gujarat Public Service Commission candidates. Similarly, when a candidate from GPSC was available, quarterly recruited clerks had to be discharged from service if they were not recommended by the GPSC. If the candidate was recommended by the GPSC, he had to pass the post recruitment examination. In the event of his failure to pass the same, such a candidate was liable to be discharged. A situation had developed when some of the candidates who were recommended by the GPSC could not pass the post training examination. They were to be substituted by the GPSC candidates or if the GPSC candidates were not available, by ad-hoc appointees. One set of employees was of those who were earlier in service recommended by the GPSC for being appointed, but who could not pass the examination and another set

comprised of the employees who were recruited from open market. The candidates recruited from open market were raw. Therefore, the Government directed that till the GPSC candidates become available, first set of employees may continue in service as temporary clerks without loss of seniority which they had at the time of selection by the GPSC for regular appointment. Thus, they may be continued temporarily in preference to their former juniors who may not have been selected by the GPSC at all.

6. In view of the above averment, I am of the opinion that the stand of the Government is quite right saying that the circular had no application to the appellant's case. The circular had only limited application where two sets of employees were recruited; one those who have been recommended by the GPSC but who could not, after appointment, pass the specified examination and those who have been recruited from open market and it was provided that the GPSC candidates who had failed to pass the specified examination may be continued in service despite their failure at the specified examination till regular GPSC candidates become available. In view of this, it is difficult to understand as to how this circular can at all be helpful to the appellant. In any case, this circular does not deal with the question of break to be condoned. It is necessary at this stage to refer to resolution no. TED/1063/103/63/ GH dated December 31, 1964 Ex. 19 which specifically deals with the case of the employees who had failed to pass the specified examination. That resolution clarifies the position and explains the circular Ex. 30. In the last line of this resolution, it is stated "there is no objection if the discharged candidates are appointed again as fresh recruits". This on the contrary, would go to show that the appellant is a fresh recruit and there was no question of condoning break in service. Reading notification Ex. 38, it is clear that the Heads of Departments have been given powers to condone interruption upto certain limit, but then such condonation has to be for the purpose of Rule 250 of the Bombay Civil Services Rules only.

Under Rule 250 of the Bombay Civil Services Rules, the concept of interruption of service has been dealt with. The said rule and notes have application for the limited purpose. It has no general application for all matters connected with service. It is not in dispute that the appellant had not applied for condonation of break in his service for the limited purpose under Rule 250. On the contrary, reading the prayer made in the

plaint, it is clear that the appellant has filed the suit for a relief that the Court should order condonation of 25 days break in service and declare that the appellant is in service as a junior clerk from the date of his first appointment on March 16,1962 and consequently he should be granted all his legitimate pay scales etc. In view of this, it is not open for the appellant to contend that the break in his service should be condoned for the purpose stated in Note 3 of Rule 250 of the Bombay Civil Services Rules.

7. In view of what is stated above, it is not possible for me to accept the contention that the break in service of the appellant should be condoned for all purposes including seniority and other matters connected with service. In view of this, I am clearly of the opinion that the learned trial judge was right in holding that the appellant has no right to have his break in service condoned and for treating him in continuous service with effect from March 16,1962. In view of this finding, it is not necessary for me to decide the question as to whether the suit suffers from the vice of non joinder of parties and whether the suit is barred by the period of limitation or not.

8. In view of this, I do not see any merits in this appeal and hence it is dismissed. Considering the facts of the case, no order as to costs.

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